

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

ALLIANCE FOR HIPPOCRATIC MEDICINE, on behalf of itself, its member organizations, their members, and these members' patients; AMERICAN ASSOCIATION OF PRO-LIFE OBSTETRICIANS AND GYNECOLOGISTS, on behalf of itself, its members, and their patients; AMERICAN COLLEGE OF PEDIATRICIANS, on behalf of itself, its members, and their patients; CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS, on behalf of itself, its members, and their patients; SHAUN JESTER, D.O., on behalf of himself and his patients; REGINA FROST-CLARK, M.D., on behalf of herself and her patients; TYLER JOHNSON, D.O., on behalf of himself and his patients; and GEORGE DELGADO, M.D., on behalf of himself and his patients,

Plaintiffs,

No. 2:22-cv-00223-Z

v.

U.S. FOOD AND DRUG ADMINISTRATION; ROBERT M. CALIFF, M.D., in his official capacity as Commissioner of Food and Drugs, U.S. Food and Drug Administration; JANET WOODCOCK, M.D., in her official capacity as Principal Deputy Commissioner, U.S. Food and Drug Administration; PATRIZIA CAVAZZONI, M.D., in her official capacity as Director, Center for Drug Evaluation and Research, U.S. Food and Drug Administration; U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES; and XAVIER BECERRA, in his official capacity as Secretary, U.S. Department of Health and Human Services,

Defendants.

UNOPPOSED MOTION FOR THE STATES OF NEW YORK, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, HAWAI'I, ILLINOIS, MAINE, MARYLAND, MASSACHUSETTS, MICHIGAN, MINNESOTA, NEVADA, NEW JERSEY, NEW MEXICO, NORTH CAROLINA, OREGON, PENNSYLVANIA, RHODE ISLAND, WASHINGTON, AND WISCONSIN, AND THE DISTRICT OF COLUMBIA FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE IN SUPPORT OF DEFENDANTS AND IN OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

The States of New York, California, Colorado, Connecticut, Delaware, Hawai‘i, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Washington, and Wisconsin, and the District of Columbia respectfully move this Court for leave to file the attached brief as amici curie in support of defendants and in opposition to plaintiffs’ motion for preliminary injunction. For the reasons described below, amici’s proposed brief contains relevant material that may aid the Court in resolving the issues raised by plaintiffs’ motion. Counsel for the parties have been consulted regarding this motion, and all parties have indicated they do not oppose.

Amici States have a substantial interest in this case. The continued availability of mifepristone for medication abortions is critical to safeguarding each of the amici State’s interest in protecting the health, safety, and rights of its residents, including an interest in ensuring safe access to essential reproductive health care. An order requiring the FDA to withdraw its approval of mifepristone will have devastating consequences for the residents of amici States. It would make medication abortion largely unavailable, leaving women seeking abortion with no choice other than to undergo a nonmedication abortion procedure, and drastically reduce access to abortion overall. And because medication abortion is the most common method used to terminate pregnancy during the first trimester, eliminating access to this method will result in more abortions taking place later in pregnancy, further increasing costs and medical risks. Finally, annulling the FDA’s approval of mifepristone would, in effect, eviscerate amici States’ sovereign decisions to protect the right to choose to terminate a pregnancy as it could prevent countless persons in amici States from obtaining an abortion.

The attached brief explains that in the experience of amici States, medication abortion is a safe and effective method for terminating pregnancies. The brief describes how the FDA’s

determinations regarding the overall safety and efficacy of medication abortion are consistent with the overwhelming medical consensus and supported by voluminous evidence based on years of clinical research and practice. The brief further argues that medication abortion is an indispensable component of reproductive health care and describes how it has helped promote access to abortion in rural and underserved communities. Amici present data and studies showing that medication abortion not only promotes access to abortion as early as possible when it is safest and least expensive, but also that it vastly improves access to reproductive health care, particularly for low-income individuals, women of color, and those living in rural and underserved communities.

As amici also describe in their brief, annulling the FDA's approval of mifepristone would have devastating consequences for the residents of amici States. The brief explains that without the ability to obtain medication abortion, individuals seeking abortion would need to turn to other methods that are more costly, less accessible, and involve greater risks. The brief explains how these harms are heightened following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 142 S. Ct. 2228 (2022), and will impact women both in States where abortion is available and also in States where abortion is banned. The information from amici's own experiences will assist this Court in assessing the likelihood of success on the merits, weighing the equities of plaintiffs' motion, and determining whether an injunction serves the public interest.

CONCLUSION

The Court should grant amici curiae leave to file the attached brief in support of defendants and in opposition to plaintiffs' motion for preliminary injunction.

Dated: New York, New York
February 10, 2023

Respectfully submitted,

LETITIA JAMES
Attorney General
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/s/ Galen Leigh Sherwin*
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CERTIFICATE OF CONFERENCE (Local Rule 7.1)

Galen Leigh Sherwin, counsel for movants, conferred via email with counsel for plaintiffs. Counsel for plaintiffs has indicated they do not oppose this motion for permission to file the attached brief as amici curiae.

Galen Leigh Sherwin also conferred via email with counsel for defendants and counsel for intervenor defendant, who confirmed that defendants and intervenor defendant do not oppose this motion for permission to file the attached brief as amici curiae.

Dated: New York, New York
February 10, 2023

/s/ Galen Leigh Sherwin
GALEN LEIGH SHERWIN